



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 21-2

September 2, 2022

Petition of Charter Fiberlink MA-CCO, LLC and Time Warner Cable Information Services (Massachusetts), LLC for Designation as an Eligible Telecommunications Carrier.

SECOND ORDER AMENDING ETC SERVICE AREA

I. INTRODUCTION

Time Warner Cable Information Services (Massachusetts), LLC (“Time Warner”) has requested that the Department of Telecommunications and Cable (“Department”) amend its Eligible Telecommunications Carrier (“ETC”) service area. *Second Petition of Time Warner to Amend its ETC Designated Serv. Area*, D.T.C. 21-2 (June 7, 2022) (“Second Service Area Petition”). Time Warner’s ETC service area was initially defined in the Department’s June 4, 2021, Order Approving Petition and was amended in the Department’s December 13, 2021, Order in this proceeding. D.T.C. 21-2, *Order* (Dec. 13, 2021) (“First Order Amending ETC Service Area”); D.T.C. 21-2, *Order Approving Petition* (June 4, 2021) (“Order Approving Petition”). The Department grants Time Warner’s Second Service Area Petition for the reasons set forth below.

II. PROCEDURAL HISTORY

On January 6, 2021, Charter Fiberlink MA-CCO, LLC (“Charter Fiberlink”) and Time Warner filed a joint petition seeking designation as ETCs. *Joint Application of Charter Fiberlink & Time Warner for Designation as ETCs to Receive Rural Digital Opportunity Fund*

Auction (Auction 904) Support for Voice & Broadband Servs. & Request for Expedited Review (Jan. 6, 2021). On June 4, 2021, the Department designated Charter Fiberlink and Time Warner (collectively, “Charter”) as ETCs in limited geographical service areas for purposes of receiving funds that were provisionally awarded through the Federal Communications Commission’s (“FCC”) Rural Digital Opportunity Fund (“RDOF”) auction. *See* Order Approving Petition. The Department initially designated Charter Fiberlink and Time Warner as ETCs so they could receive high-cost funds in order to build out a network offering voice and broadband services in unserved and underserved areas comprising 1,225 census blocks, which were located within the municipalities of Alford, Ashfield, Athol, Becket, Bernardston, Blandford, Charlemont, Chester, Chesterfield, Colrain, Cummington, Egremont, Erving, Florida, Goshen, Hancock, Hawley, Heath, Lanesborough, Leyden, Middlefield, Monroe, Monterey, Mount Washington, New Ashford, New Salem, Orange, Otis, Petersham, Plainfield, Rowe, Royalston, Russell, Sandisfield, Savoy, Shelburne, Shutesbury, Tolland, Tyringham, Warwick, Washington, Wendell, Westfield, Windsor, and Worthington, Massachusetts (“Original Time Warner Service Area”). *Id.* at 25, Exh. B.

On May 11, 2021, Charter filed a petition with the FCC seeking “a limited waiver of its RDOF application and deployment obligations in Massachusetts.” *In re FCC Rural Digital Opportunity Fund*, WC 10-90, *Petition for Waiver* (May 11, 2021) (“Original Petition for Waiver”). Charter corrected the Original Petition for Waiver by letter to the FCC on May 13, 2021. Letter from Maureen O’Connell, Vice President, Regulatory Affairs, Charter, to Marlene Dortch, Sec’y, FCC (May 13, 2021) at 4 (as corrected, “Petition for Waiver”). Through the Petition for Waiver, Charter sought relief from its RDOF obligations in the Charter Fiberlink

Service Area and parts of the Original Time Warner Service Area, comprising 33 census block groups and some locations in two additional census block groups.¹ *Id.*

On October 29, 2021, Charter filed a petition with the Department requesting to amend the Original Time Warner Service Area.² *Petition of Charter Fiberlink & Time Warner to Amend their Respective ETC Designated Serv. Areas*, D.T.C. 21-2 (Oct. 29, 2021) (“First Service Area Petition”). Charter petitioned to relinquish Time Warner’s ETC designation in 990 of the census blocks in the Original Time Warner Service Area. *Id.* On December 13, 2021, the Department issued an Order granting the First Service Area Petition. *See First Order Amending ETC Service Area.*

On June 7, 2022, Time Warner submitted the Second Service Area Petition to revise its ETC service area again by removing additional census blocks so that its service area will remain consistent with the area where it continues to be eligible for RDOF support. These additional census blocks are located in Charlemont, Hawley, Monroe, and Rowe, Massachusetts and are listed in Exhibit A attached hereto (“Time Warner Removed Census Blocks”). *See supra* note 1; Second Service Area Petition at Exh. 1.

¹ On July 26, 2021, the FCC stated that it “[did] not find good cause to grant” Charter’s request that Charter be relieved of its “obligation to apply for support for the [33] census block groups at issue without being subject to the [FCC’s] default penalty framework.” *RDOF Bid Defaults Announced*, Public Notice, DA 21-910 (July 26, 2021) at 2 n.8 (“First FCC Public Notice”). At the time, the FCC had not rendered a decision on Charter’s request regarding the locations in the two additional census block groups, which are located in the towns of Charlemont, Hawley, Monroe, and Rowe, Massachusetts. *See Original Petition for Waiver* at 14-15; First FCC Public Notice at 2 n.6; First Order Amending ETC Service Area at 3 n.2. Charter did not seek to relinquish its ETC designation in these census blocks in the First Service Area Petition, but Time Warner does so here in the Second Service Area Petition. First Service Area Petition at Exh. 2; Second Service Area Petition at Exh. 1. On May 3, 2022, the FCC issued a Public Notice confirming that Charter was in default for and would not be awarded RDOF support for these locations in Charlemont, Hawley, Monroe, and Rowe. *RDOF Support for 2,061 Winning Bids Ready to Be Authorized; Bid Defaults Announced*, Public Notice, DA 22-483 (May 3, 2022) at 5 n.44.

² In the First Service Area Petition, Charter also requested to relinquish Charter Fiberlink’s ETC designation in its entirety. The Department granted this request in the First Order Amending ETC Service Area.

On June 24, 2022, the Department issued an Order of Notice which required Time Warner to publish a Notice, providing notice of the opportunity for hearing, public comment, and intervention, in the *Berkshire Eagle* and the *Greenfield Recorder* by July 5, 2022, and to provide the Department with proof of publication by July 19, 2022. *See* D.T.C. 21-2, *Order of Notice* (June 24, 2022). On July 18, Time Warner filed proof of publication in the *Berkshire Eagle* and *Greenfield Recorder*, showing publication in each on June 29, 2022. The Department hereby accepts Time Warner's Certificate of Publication of Notice. The Department received no requests for a hearing, no intervention requests, and no comments in this proceeding. Any right to a hearing in this matter was thus waived. *See* G.L. c. 30A, § 10.

III. ANALYSIS AND FINDINGS

A. Standard

An ETC must meet both federal and state requirements to relinquish its ETC designation in some or all of its service area. *See* First Order Amending ETC Service Area at 4-5.

1. Federal Requirements

Federal law provides the following:

A State commission . . . shall permit an [ETC] to relinquish its designation as such a carrier in any area served by more than one [ETC]. An [ETC] that seeks to relinquish its [ETC] designation for an area served by more than one [ETC] shall give advance notice to the State commission . . . of such relinquishment. Prior to permitting a telecommunications carrier designated as an [ETC] to cease providing universal service in an area served by more than one [ETC], the State commission . . . shall require the remaining [ETC(s)] to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining [ETC]. The State commission . . . shall establish a time, not to exceed one year after the State commission . . . approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

47 U.S.C. § 214(e)(4); *see also* 47 C.F.R. § 54.205. Thus, for the Department to grant an ETC's petition to relinquish an ETC designation in a some or all of its service area: (1) there must be more than one ETC serving that portion of its service area; (2) the ETC must give the Department advance notice of its intent to relinquish its ETC designation; (3) the remaining ETC(s) in the service area must ensure that all of the relinquishing ETC's customers will continue to be served; and (4) to the extent that additional facilities are required to serve any of those customers, there must be sufficient notice to allow the remaining ETC(s) to construct or purchase those additional facilities.

2. State Requirements

An ETC that plans to cease offering Lifeline service in Massachusetts must, at a minimum, (1) notify its Lifeline customers and the Department 60 days in advance of the ETC's planned discontinuance of Lifeline service in all or part of Massachusetts and (2) work in good faith with its Lifeline customers and the Department to facilitate smooth transition of customers to alternative ETCs of the customers' choice ("13-4 Requirements"). *Investigation by the Dep't on its Own Motion into the Implementation in Mass. of the Fed. Commc'ns Comm'n's Order Reforming the Lifeline Program*, D.T.C. 13-4, *Order Implementing Requirements & Further Request for Comment* (Aug. 1, 2014) at 21, Appendix ("13-4 Order Implementing Requirements").

B. Analysis

The Department finds that Time Warner has met both the federal and state requirements to amend its service area by relinquishing its ETC designation under 47 U.S.C. § 214(e)(4) in the Time Warner Removed Census Blocks. *See* 47 U.S.C. § 214(e)(4); First Order Amending ETC Service Area; 13-4 Order Implementing Requirements at 21, Appendix.

1. Federal Requirements

First, the Time Warner Removed Census Blocks are served by at least one other ETC. *See* 47 U.S.C. § 214(e)(4); Second Service Area Petition at 4. The Time Warner Removed Census Blocks are served entirely by Verizon New England Inc. d/b/a Verizon Massachusetts (“Verizon”), which is an ETC. *Investigation by the Dep’t of Telecomms. & Energy on its own motion concerning (1) designation of eligible telecomms. carriers, pursuant to § 102 of the Telecomms. Act of 1996 (“Act”); (2) participation in the FCC’s modified Lifeline program & acceptance of increased fed. funding, pursuant to 47 C.F.R. §§ 54.400-54.417 et seq.; & (3) participation in the FCC’s program for discounted intrastate rates for telecomms. servs. for rural health care providers, pursuant to § 254(h) of the Act*, D.T.E. 97-103, *Order* at 7 (Dec. 23, 1997) (designating Verizon, then New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, as an ETC in its study area); *In re Connect Am. Fund, Rep. & Order*, DA 12-1777, ¶ 1 n.1 (rel. Nov. 6, 2012) (“[a] ‘study area’ is the geographic area served by an incumbent local exchange carrier (LEC) within a state and consists of one or more exchanges”).³ Therefore, all the census blocks from which Time Warner seeks to relinquish its ETC designation are served by at least one other ETC.

Second, Time Warner gave the Department advance notice of its intent to relinquish its ETC designation in the Time Warner Removed Census Blocks. *See* 47 U.S.C. § 214(e)(4); Second Service Area Petition. With the Second Service Area Petition, filed on June 7, 2022,

³ Verizon provides local exchange service throughout Massachusetts except in the Towns of Gosnold, Granby, Hancock, and Richmond. *See, e.g., In re Global Connection Inc. of Am. d/b/a STAND UP WIRELESS*, D.T.C. 11-11, *Order* at 7-9 (Mar. 5, 2013) (holding that all of Massachusetts is served by Verizon, Granby Telephone and Telegraph Company, Inc. (which operates only in the Town of Granby), Richmond Telephone Company (which operates only in the Town of Richmond), Sentinel Tree Telephone Company, Inc. (which operates only in the Town of Gosnold), and Taconic (which operates in Massachusetts only in the Town of Hancock)). None of the Time Warner Removed Census Blocks contain any portion of Gosnold, Granby, Hancock, or Richmond. Second Service Area Petition at Exh. 1.

Time Warner notified the Department of this intent. Further, Time Warner has not begun to operate as an ETC in the Time Warner Removed Census Blocks, as it has not built out its network in the service area. *See* Second Service Area Petition at 4. The Department finds that Time Warner's notice is sufficient.

Third, the requirement that Time Warner's customers "will continue to be served" upon Time Warner's relinquishment of its ETC designation is met in this case because Time Warner states that it is not providing service in the Time Warner Removed Census Blocks and thus does not have any customers. 47 U.S.C. § 214(e)(4); Second Service Area Petition at 4.

Fourth, for the same reason that Time Warner does not have any customers, additional facilities and notice to allow remaining ETC(s) to construct or purchase those additional facilities are not required in this case. *See* 47 U.S.C. § 214(e)(4); Second Service Area Petition at 4.⁴

As a result of the foregoing, the Department finds that Time Warner has met the federal standard for relinquishment of its ETC designation in the Time Warner Removed Census Blocks under 47 U.S.C. § 214(e)(4).

2. State Requirements

The Department finds that Time Warner has satisfied the 13-4 Requirements. As discussed above, Time Warner states that it does not have any customers in the Time Warner Removed Census Blocks. Second Service Area Petition at 4. Accordingly, Time Warner has no Lifeline customers to notify of the proposed discontinuance. *See* 13-4 Requirements. The Department also determines that Time Warner has provided the required notice to the Department of its planned relinquishment in the Time Warner Removed Census Blocks. *See* Second Service Area Petition; *id.* Finally, because Time Warner has no Lifeline subscribers, the

⁴ The Department therefore need not establish a time within which such purchase or construction shall be completed. *See* 47 U.S.C. § 214(e)(4).

Department need not address the requirement that Time Warner work in good faith with its Lifeline subscribers and the Department to facilitate smooth transition of such subscribers to alternative ETCs of the customers' choice. *See* 13-4 Requirements.

The Department finds that Time Warner has met the Department's requirements for discontinuance of Lifeline service in the Time Warner Removed Census Blocks.

IV. CONCLUSION

Time Warner has met the federal standard for relinquishment of an ETC designation and has satisfied the Department's requirements for discontinuance of Lifeline service in the Time Warner Removed Census Blocks. Accordingly, the Department grants the Second Service Area Petition. As a result of this Order, Time Warner's ETC service area shall be comprised of the census blocks listed in Exhibit B attached hereto. *See* Second Service Area Petition at Exh. 1.

V. ORDER

After notice, opportunity for comment and a full and fair hearing, and consideration, it is hereby

ORDERED: that the Department GRANTS the Second Service Area Petition to amend Time Warner's ETC service area as described herein; and it is

FURTHER ORDERED: that Time Warner SHALL TRANSMIT a copy of this Second Order Amending ETC Service Area to the Universal Service Administrative Company.

By Order of the Department:



Karen Charles Peterson, Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.

Exhibit A
Time Warner Relinquished Census Blocks

250110401001002	250110401001010	250110401001026	250110401001027
250110401001036	250110401001038	250110401001052	250110401001056
250110401001058	250110401001062	250110401001064	250110401001067
250110401001070	250110401001072	250110401001073	250110401001088
250110401001092	250110401001094	250110401001096	250110401001097
250110401001098	250110401001099	250110401001100	250110401001108
250110401001113	250110401001120	250110401001122	250110401001126
250110401001127	250110401001131	250110401001134	250110401001136
250110401001167	250110401001192	250110401004003	250110401004020
250110401004028	250110401004036	250110401004051	250110401004055
250110401004057	250110401004059	250110401004069	250110401004072
250110401004073	250110401004128		

Exhibit B
Time Warner Retained Census Blocks

250039111002009	250039111002014	250039111002016	250039111002017
250039111002025	250039111002032	250039111002035	250039111002037
250039111002043	250039313001000	250039313001001	250039313001002
250039313001004	250039313001005	250039313001014	250039313001017
250039313001018	250039313001019	250039313001026	250039313001051
250039313001069	250039313001096	250039313001102	250039313001103
250039313002032	250039313002038	250039313002049	250039313002058
250039313002060	250039313002063	250039313002066	250039313002067
250039313002068	250039313002072	250039313002074	250039313002080
250039313002083	250039313002084	250039313002086	250039313002087
250110404001001	250110404001002	250110404001003	250110404001004
250110404001006	250110404001007	250110404001008	250110404001012
250110404001016	250110404001017	250110404001019	250110404001022
250110404001023	250110404001024	250110404001025	250110404001026
250110404001027	250110404001030	250110404001031	250110404001032
250110404001033	250110404001035	250110404001036	250110404001037
250110404001039	250110404001043	250110404001046	250110404001047
250110404001048	250110404001049	250110404001051	250110404001054
250110404001055	250110404001060	250110404001061	250110404001062
250110404001063	250110404001064	250110404001066	250110404001067
250110404001068	250110404001069	250110404001071	250110404001073
250110404001085	250110404001086	250110404001087	250110404001090
250110404001099	250110404001100	250110404001101	250110404001102
250110404001107	250110404001110	250110404001113	250110404001114
250110404001129	250110404001132	250110404001133	250110404001134
250110404001151	250110404001153	250110405022002	250110405022007
250110405022009	250277022002002	250277022002003	250277022002004
250277022002005	250277022002008	250277022002010	250277022002011
250277022002012	250277022002015	250277022002016	250277022002017
250277022002021	250277022002023	250277022002025	250277022002026
250277022002027	250277022002028	250277022002031	250277022002033
250277022002037	250277022002039	250277022002040	250277022002041
250277022002043	250277022002044	250277022002046	250277022002047
250277022002048	250277022002051	250277022002053	250277022002054
250277022002055	250277022002056	250277022002058	250277022002063
250277022002066	250277022002069	250277022002070	250277022002076
250277022002077	250277022002078	250277022002079	250277022002082
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250277022002093	250277022002094	250277022002096	250277022002098
250277022002102	250277022002103	250277022002104	250277022002110
250277022002111	250277022002114	250277022002115	250277022002116
250277022002117	250277022002120	250277022002121	250277022002123

250277022002124	250277022002125	250277022002126	250277022002132
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250277022002148	250277022002149	250277022002158	250277022002170
250277022002173	250277022002178	250277032002000	250277032002007
250277032002015			